

**California Victim Compensation and Government Claims Board**  
**Open Meeting Minutes**  
**August 18, 2011, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Anna Caballero, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, August 18, 2011, at 10:13 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer, and Wayne Strumpfer, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

**Item 1. Approval of Minutes of the June 21, 2011, Additional Board Meeting**

The Board voted to approve the minutes of the June 21, 2011, additional Board meeting.

**Item 2. Approval of Minutes of the June 16, 2011, Board Meeting**

The Board voted to approve the minutes of the June 16, 2011, meeting.

**Item 3. Public Comment**

The meeting was opened for public comment. No public comment was provided.

**Item 4. Executive Officer's Statement**

**Action Taken on Mental Health Providers**

Executive Officer Nauman submitted a written report to the Board regarding the action taken on mental health providers. As a result of findings identified in recent internal audits and investigations, George Sachs, Ph.D., Sachs Institute; Justine Johnson, MFTI, Connecting Mental Health and Outreach; and Harold L. Tyson, LMFT, have been unauthorized indefinitely.

All claimants with billings from these providers were notified that in order to be reimbursed for mental health treatment, he/she would need to see a mental health provider authorized by CalVCP, effective July 15, 2011.

The providers were notified that if they wished to appeal the decision, they must respond to the CalVCP in writing before August 15, 2011. George Sachs and Justine Johnson have both requested an appeal of the action taken by the Board. A hearing will be scheduled with the providers at a future Board meeting.

**Summary of Issues Regarding George Sachs, Ph.D., Sachs Institute**

- VCGCB determined that Sachs submitted billings on a number of occasions for services that were not provided and for sessions billed in excess of the actual session length; specifically, the CalVCP was billed for 30 sessions for a claimant who confirmed attending only one session.
- Six claimants confirmed that Sachs billed for full-length sessions when the sessions were conducted for only 20 to 30 minutes. In addition, Sachs billed for mental health treatment sessions for all of these claimants even though the VCGCB has determined through a review of treatment notes that the therapy was not related to the qualifying crime.

This action applies to all claims for services subsequent to July 15, 2011. All pending billing for dates of service prior to this action are being verified individually prior to payment. All previously paid claims will be reexamined and verified, and unless verified, an overpayment determination will be issued. Any billing received for dates of service subsequent to this action will be returned. Any pending requests for Additional Treatment Plans (ATPs) will not be addressed, and ATPs previously approved will be considered rescinded.

#### Summary of Issues Regarding Justin Johnson, MFTI, Connecting Mental Health and Outreach

- Billing therapy sessions that did not occur.
- Billing for individual therapy when family (group) therapy was provided.
- Billing hours that exceeded the actual session length.
- Missing treating therapist's license number.
- Missing supervising therapist's name/signature.
- Different treatment notes with the same date of service.
- Therapists signature on the treatment notes does not match the signature on the billing statements.
- Not all treatment notes were submitted timely, when requested.
- Post-dated treatment notes.
- Intern may have proprietary interest in CMHO.
- Quality of treatment.

#### Summary of Issues Regarding Harold L. Tyson, LMFT

- Submitted billing on more than one occasion for services that were not provided. Specifically, the VCGCB confirmed with a claimant that Tyson billed CalVCP for 13 sessions that were not actually conducted with the claimant. Tyson also stated that treatment for this claimant was only provided on 19 occasions but treatment notes were submitted for 57 sessions.
- Provided mental health services to a claimant in violation of the California Association of Marriage and Family Therapists' Code of Ethics regarding Dual Relationships by providing therapy to his daughter-in-law.

This action applies to all claims for services subsequent to July 15, 2011. All pending billing for dates of service prior to this action are being verified individually prior to payment. All previously paid claims will be reexamined and verified, and unless verified, an overpayment determination will be issued. Any billing received for dates of service subsequent to this action will be returned to Tyson. Any pending requests for Additional Treatment Plans (ATPs) will not be addressed, and ATPs previously approved will be considered rescinded.

Casa de la Familia (Casa) and Paladin Eastside Psychological Services, Inc. (Paladin) were temporarily unauthorized in the CaRES claims processing system as a result of issues identified through recent internal audits and investigations.

Paladin was reauthorized in CaRES on July 29, 2011, and Casa was reauthorized in CaRES on August 4, 2011. Staff have been processing their billings and conducting a manual verification of services provided.

Casa and Paladin met with the CalVCP to discuss corrective actions to address a number of billing issues and have provided CalVCP with responses to the allegations and findings regarding their

respective agencies. Staff is reviewing these documents to determine whether any allegations or findings were incorrect. In the interim, each agency has been placed on a Corrective Action Plan which incorporates their comments and concerns, and the expedited payment process in CaRES (Rules Engine) will not be used for these two providers until issues are resolved.

A Benefit Determination Section team of 10 staff and 4 staff from JP counties will be individually verifying all pending bills from Casa de la Familia and Paladin .

The CalVCP will continue to report to the Board on the status of these actions as appropriate.

### **New Policy Regarding Releasing Confidential Information to Social Workers**

At the June 16, 2011, Board meeting, Michael Siegel raised questions relating to the CalVCPs requirements for social workers representing dependent minor claimants. Mr. Siegel expressed concern regarding the CalVCPs practice of requiring social workers to provide their date of birth (DOB) or social security number (SSN) in order to access confident information regarding the minor's claim.

Executive Officer Nauman reported that the issue had been addressed by staff prior to the comment provided by Mr. Siegel. Ms. Nauman stated that shortly before the June 16, 2011, meeting, it was determined that a change to the CalVCP's requirements was appropriate. Ms. Nauman reported that the CalVCP no longer requires that social workers provide their DOB or SSN when they are filing as the applicant for a minor child. The current practice and policy is for staff to ask the social worker a series of questions relating to the victim or claimant's application. With satisfactorily correct answers, staff will release the information. Changes to the CalVCPs policy and procedure manuals reflecting this new policy have already been made.

### **Annual National Association of Crime Victim Compensation Boards (NACVCB) Conference**

The NACVCB will hold its annual National Training Conference in Long Beach on September 19-22. This year the NACVCB teamed up with the National Association of VOCA Assistance Administrators to provide a more comprehensive set of workshops to individuals who provide both victim compensation as well as assistance throughout the state. Executive Officer Nauman, who serves as a member of the NACVCB, reported that Secretary of State and Consumer Services Agency and VCGCB Chairperson Anna Caballero would provide opening remarks at the conference. CalVCP staff assisted in the planning of the conference and will make a number of presentations.

### **Update on Restitution Summit**

As a follow up to the successful Restitution Summit held in November 2010, Executive Officer Nauman hosted a series of conference calls with the panelists that included judges, district attorneys, collections representatives, and probation officers. The panelists shared additional ideas to improve restitution collections and agreed to continue the important dialogue. An action plan for the next steps will be developed to ensure the imposition and vigorous collection of restitution. Executive Officer Nauman reported that she would provide updates to the Board on the group's efforts.

Chairperson Caballero thanked Executive Officer Nauman for the resolution regarding releasing information to social workers.

### **Item 5. Contract Report**

#### **LexisNexis**

Under a master service agreement, LexisNexis provides on-line access to an extensive database of legal documents which is used extensively by the Board's Legal Office staff as well as by the Fiscal

Services staff to research liens, overpayments, subrogation, and restitution issues. The Board approved the three-year contract in the amount of \$62,000.

#### Sharp Electric Corporation c/o Smile BPI (Copier Replacements)

Under the California Strategic Sourcing Initiative agreement, the Board purchased copiers to replace copiers that had reached their useful life cycle. The Board approved the purchase of 16 copiers at a total cost of \$93,310.26.

#### Hewlett-Packard (HP Blade System)

The blade enclosure houses 12 blade style servers that are used to run CaRES and other applications needed by the VCGCB. The enclosure located at OTech is nearing full capacity and another one is needed to house the additional growth driven by the CaRES Modification Project. The Board approved the purchase of the blade system at a total cost of \$107,595.16. The contract was reported on the Board's Information Technology Acquisition Plan and approved by the California Technology Agency.

#### Western Blue, an NWN Company (HP Servers)

The purchase of HP Proliant servers is an important part of an infrastructure build in support of the CaRES Modification Project. Once testing is complete, this environment will become the new production environment for CaRES. The Board approved the purchase of 13 HP servers in the total amount of \$151,690.69. The contract was reported on the Board's Information Technology Acquisition Plan and approved by the California Technology Agency.

#### CompuCom – Amdt. 1 (Microsoft Licenses)

Microsoft licenses were purchased to support the increased number of processors necessary to support CaRES and the CaRES Modification Project. This was a "true-up" exercise with Microsoft to ensure the VCGCB remains in compliance. True-ups allow the ability to add licenses without having to renegotiate the agreement. The Board approved the purchase of 87 Microsoft licenses in the total amount of \$472,160.55, which reflects an amendment of \$126,547.18. The contract was reported on the Board's Information Technology Acquisition Plan and approved by the California Technology Agency.

### **Item 6. Legislative Update**

Jon Myers, Deputy Executive Officer Manager, Legislation and Public Affairs Division, reported the following:

- SB 207 (Kehoe), the Board's first Government Claims Bill of 2011, appropriates \$557,729.29 to pay claims approved by the Board from June 2010 through November 2010. The bill is enrolled.
- SB 139 (Fuentes), the Board's second Government Claims Bill of 2011, appropriates \$3,009,627.04 to pay claims approved by the Board from December 2010 through May 2011. It also appropriates \$162,700 to pay the erroneous conviction claim of Robert Cuevas. The bill passed and now is on the Senate floor.
- AB 898 (Alejo), the bill relating to restitution fines, increases the minimum amounts for restitution fines imposed on convicted defendants from \$200 to \$300 for felonies and from \$100 to 200 for misdemeanors.

### **Item 7. Consent Agenda (Nos. 1- 697)**

The Board voted to adopt the staff recommendations for item numbers 1-697, as amended, as follows: item number 366 (G587613) was removed because the Board lacked jurisdiction over the claim and item number 584 (G598290) was continued to the next Board meeting.

**Item 8. Claim of Aspect Software**  
**Claim Number G592488**

Aspect Software requested payment in the amount of \$52,032.00 for consulting services provided to the California Department of Corrections and Rehabilitation from July 1, 2010, through August 31, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$52,032.00, under authority of Government Code section 965 (agency pay).

**Item 9. Claim of Jonathan Sudduth, dba Jonny Socket Electrical & HVAC**  
**Claim Number G592842**

Jonathan Sudduth, claimant, and Michael Cable, claimant's representative, appeared and addressed the Board.

Jonny Socket Electrical & HVAC requested payment in the amount of \$92,899.43 from the California Highway Patrol for unpaid invoices for services rendered from May 1, 2009, through September 1, 2009.

Mr. Cable stated that he wanted to ensure that the Board was not taking action with respect to interest and prompt payments associated with the claim.

Julie Nauman, Executive Officer, stated that the determination of whether interest or prompt payment would be awarded is not within the Board's purview. She stated that the State Controller's Office makes that determination and calculates the interest, if any, is to be awarded.

The Board voted to allow the claim in the amount \$92,899.43, under authority of Government Code section 965 (agency pay).

**Item 10. Claim of Excalibur Well Services Corporation**  
**Claim Number G592962**

Excalibur Well Services Corporation requested payment in the amount of \$113,995.25 for additional work to remediate a leaking well provided to the Department of Conservation from March 24, 2010, through May 26, 2010.

The Board voted to allow the claim in the amount of \$113,995.25 under authority of Government Code section 965 (agency pay).

**Item 11. Claims of Oscar Villegas (G593881 - \$1,183.88), Colleen Stoner (G593882 - \$1,301.00), Helene Zentner (G593883 - \$1,015.40), and Aaron Long (G593884 - \$1,076.88)**

Claimants Oscar Villegas, Colleen Stoner, Helene Zentner, and Aaron Long appeared. Stephanie Wheatley appeared on behalf of the California Department of Corrections and Rehabilitation.

The claimants requested reimbursement of travel expenses incurred while attending a conference during the period of April 7, 2010, through April 9, 2010.

Government Claims Program (GCP) staff and the California Department of Corrections and Rehabilitation (CDCR) recommended that claim G593881 be allowed, in full, in the amount of \$1,183.88, under authority of Government Code section 965 (agency pay). GCP staff and CDCR

further recommended that claims G593882, G593883, and G593884 be partially allowed under authority of Government Code section 965 (agency pay) in the following amounts: G593882 - \$1,237.20, G593883 - \$1,009.40, and G593884 - \$1,046.88.

The Department of Personnel Administration recommended that the Board reject all of the claims because CDCR did not obtain pre-approval of the travel expenses.

Chairperson Caballero asked Ms. Wheatley to clarify the basis for CDCR's recommendation to partially allow three of the claims.

Ms. Wheatley explained that changes were made to three claims, which required adjustments to the claimed amounts. She further clarified that Mr. Long included reimbursement for lunch, however, lunch was provided at the conference; Ms. Stoner inadvertently claimed the incorrect location for mileage to and from the airport and there was an error on the taxi cab receipt; and Ms. Zentner included reimbursement for breakfast, however, the hotel rate included breakfast.

Ms. Caballero asked the claimants if they agreed with the recitation of the figures provided by Ms. Wheatley. All claimants agreed with the revised claimed amounts.

The Board voted to adopt the staff recommendations, as follows: claim G593881 was allowed, in full, in the amount of \$1,183.88 (agency pay); G593882 was partially allowed in the amount of \$1,237.20 (agency pay); G593883 was partially allowed in the amount of \$1,009.40 (agency pay); and G593884 was partially allowed in the amount of \$1,046.88 (agency pay).

**Item 12. BeesonTerhorst LLP**  
**Claim Number G595599**

Michael Terhorst, claimant, appeared and addressed the Board.

Beeson Terhorst LLP requested payment in the amount of \$129,007.48 for legal services provided to the California Department of Corrections and Rehabilitation (CDCR) during fiscal year 2009/2010. Mr. Terhorst stated that the knowledgeable and experienced attorneys at Beeson Terhorst LLP have represented the State in numerous civil rights cases and have successfully defeated every writ filed by inmates. He stated that although their rates are reduced, they do not reduce the quality of service they provide. He further stated that the CDCR invoice is over two years old and the \$129,007.48 claimed is a small portion because over \$200,000.00 remains unpaid.

Chairperson Caballero stated that the Board would begin focusing on departments that perennially fail to pay contractors for services provided thereby forcing contractors or vendors to file a government claim in order to be compensated. She stated that the goal is to stop the practice from occurring; however, she recognized that there may be circumstances beyond the control of the departments, which appeared to have occurred in this case, because Beeson Terhorst LLP provided services to CDCR on an emergency basis.

Mr. Terhorst stated that he would also seek interest because the invoice is over two years old and CDCR should be made to pay a penalty to discourage them from continuing their practice of paying late.

Julie Nauman, Executive Officer, clarified that the State Controller's Office determines when late penalty payments are appropriate and determines the amount. Ms. Nauman further stated that the statute requires that a contract be in place. She added that where there is no signed contract in place, the policy is not to pay late fees and interest.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$129,007.48 under authority of Government Code section 965 (agency pay).

**Item 13. Claim of University of Southern California**  
**Claim Number G595642**

University of Southern California requested payment in the amount of \$251,462.50 for professional services provided to the California Department of Mental Health.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$251,462.50 under authority of Government Code section 965 (agency pay).

**Item 14. Claim of Richard Camacho**  
**Claim Number G596674**

Richard Camacho requested payment in the amount of \$114,182.59 for services provided to the California Highway Patrol. An out-of-court settlement was negotiated between the CHP's Office of Legal Affairs and the claimant.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$114,182.59 under authority of Government Code section 965 (agency pay).

**Item 15. Applications for Discharge from Accountability for Collection**

The Board may discharge a state agency from accountability for the collection of money owed to the state if the debt is uncollectible or the amount of the debt does not justify the cost of collection (Gov. Code, § 13940). The agency files the application for discharge with the Office of the State Controller, which audits the application and, if appropriate, recommends to the Board that the applicant be discharged from further accountability for collection and be authorized to close its books.

In order for the Controller to make such a recommendation, it must determine that the matters contained in the application are correct, no credit exists against which the debt can be offset, collection is improbable, the cost of recovery does not justify the collection, and, for items that exceed the monetary jurisdiction of the small claims court, the Office of the Attorney General has advised, in writing, that collection is not justified by the cost or is improbable (Gov. Code, §§ 13941 and 13942).

The State Controller's Office audited seven applications from the Department of Public Health and determined that the criteria for discharge had been met. For all items exceeding the monetary jurisdiction of the small claims court, the Office of the Attorney General has also advised, in writing, that either collection is not justified by the cost or is improbable.

The Board voted to allow the seven requests by the Department of Public Health to discharge from accountability for collection debt totaling \$188,815.40.

**Item 16. Karyl Clarke (Pen. Code, § 4900 et seq.)**  
**Claim Number G580449**

Karyl Clarke, claimant, appeared and addressed the Board. Michael Canzoneri, Deputy Attorney General, appeared on behalf of the California Department of Justice, Office of the Attorney General.

Karyl Clarke sought \$63,200.00, calculated at the rate of \$100.00 per day of incarceration (632 days) for time spent in prison for the conviction of kidnapping and threatening.

Mr. Clarke stated that at the Penal Code section 4900 hearing, the hearing officer told him that the case was based on credibility because he was originally convicted of criminal threat. Mr. Clarke stated that law enforcement made numerous mistakes in the case, yet the hearing officer and the Attorney General's Office stated that he was not credible. Mr. Clarke made the following statements in support of his claim: (1) the individual whom he was convicted of kidnapping and threatening changed her testimony many times, including her assertion that he phoned her on numerous occasions. Neither his attorney nor the district attorney were able to obtain the telephone records which would have proved that he did not continually call her as she asserted; (2) when he was arrested, he was wearing socks and sandals and the police did not take him back to his apartment to allow him to obtain footwear prior to going to jail; and (3) the appellate court overturned the conviction because the prosecutor could not provide the specific date that the crime took place and thereafter chose not to retry the case. Mr. Clarke further stated although he had a prior criminal history, in 2000 he made a conscious decision to change his life and try to become a good citizen.

Mr. Canzoneri stated that the Attorney General's Office stands by the initial recommendation based on the trial court record provided to the hearing officer prior to the hearing. Mr. Canzoneri further requested that the Board adopt the recommendation provided by the hearing officer.

Chairperson Caballero thanked Mr. Clarke for attending the meeting and stated that she appreciated his comments. Ms. Caballero stated that the charges against Mr. Clarke do not influence the Board. She stated that the only issue is whether the Board could find by a preponderance of the evidence that he did not commit the crime. She stated that the only issue the Board could take into consideration is whether the hearing officer believed his testimony and if the hearing officer could reasonably believe, by a preponderance of the evidence, that Mr. Clarke could prove that he was factually innocent. Ms. Caballero stated that the hearing officer found that some of Mr. Clarke's statements were not credible; therefore, the Board had to support the hearing officer's recommendation. Regarding the kidnapping charges, she stated that the court or jury did not find Mr. Clarke guilty but found him guilty of threatening and the court of appeal rightly overturned the verdict due to an improper jury instruction.

The Board voted to adopt the hearing officer's proposed decision to deny the claim because Mr. Clarke did not meet his burden of proving by a preponderance of the evidence that he did not commit the crime for which he was incarcerated.

#### **Item 17. Kellen Clarke (Pen. Code, § 4900 et seq.)**

The claimant did not appear. Michael Canzoneri, Deputy Attorney General, appeared on behalf of the Attorney General's Office.

Kellen Clarke sought reimbursement for serving four years in state prison for a felony conviction of driving under the influence with a prior felony conviction for that crime, driving with a blood alcohol level of .08 percent or higher with a prior felony conviction for that crime, resisting a peace officer, and driving with a suspended license.

The Board voted to adopt the hearing officer's proposed decision to deny the claim because Mr. Clarke did not provide any persuasive evidence to show that he was not driving the vehicle and that he did not resist arrest; therefore, he failed to meet his burden of proving that he was innocent of the crimes with which was charged.

**Item 18. Bid Protest of Bright Group**  
**Invitation for Bid No. SAC-EOP-ROOF-2-KF**

Michael Bright, protestant, and Gerald Robertson, attorney, appeared on behalf of Bright Group. Tracey Talamantes appeared on behalf of the California Department of Corrections and Rehabilitation. Jim Calkins appeared on behalf of Sika Sarnafil, the proposed awardee, to answer questions of the Board, if requested.

Wayne Strumpfer, Chief Counsel, explained that the bid protest by Bright Group of the notice of intent to award the contract for the California Department of Corrections and Rehabilitation's Invitation for Bid No. SAC-EOP-ROOF-2-KF was to procure materials and fabrication for a roofing system at California State Prison, Sacramento. CDCR released the Invitation for Bid (IFB) on December 29, 2010, and the responses were due on February 18, 2011. CDCR issued three addendums to the IFB.

CDCR received seven bids, three of which were from Bright Group with prices of \$656,109.95; \$793,052.00; and \$832,656.70. CDCR rejected all three Bright Group bids for failure to comply with the IFB specifications. CDCR issued a notice of intent to award the contract to Sika Sarnafil, which submitted a bid with a price of \$869,723.02. Sika Sarnafil was the only company to submit a bid determined to be compliant with the IFB.

Gerald Robertson asked the Board to confirm receipt of materials submitted by Mr. Bright. Mr. Robertson stated that CDCR asked for a vapor retarder and specified a thickness of board and insulation and asked that the system, including the components, meet a particular testing requirement called FM 1-90. Mr. Robertson stated that those items are mutually exclusive. He stated that you cannot have a factory mutual FM 1-90 rated system that includes the vapor retarder that was specified by CDCR or the thickness of insulation that was specified in the IFB. Mr. Robertson stated that in July 2010, Mr. Bright worked with CDCR to provide alternatives and budgetary estimates regarding what should be specified. He stated that CDCR disqualified Mr. Bright's bid because it did not have the FM 1-90 testing criterion but rather it had a UL listing. He stated that CDCR rejected bid number 2 because it included pressure relief values and CDCR incorrectly assumed it was a vacuum type roofing system. Mr. Robertson stated that CDCR reasoned in their argument that a generic component was used for the PVC membrane and only certain PVC membranes were listed for approval. He stated that Mr. Bright is the head of American Society for Testing and Materials and, as such, is an expert and drafted the specifications for PVC membranes. He stated that the membrane that Mr. Bright offered was made by the same company but it had a different name because it was a private label.

Ms. Talamantes clarified that two compliant bids were received. CDCR received seven bids, of which the three lowest bids were from the Bright Group. All three of the Bright Groups bid were rejected because they had material deviations to CDCR's specifications, which CDCR's architects and engineers reviewed at great length. She stated that it was Mr. Bright's responsibility to provide information that proved that the alternate product that he submitted met CDCR's specification, which he did not do. The bids were rejected and Mr. Bright immediately protested. She stated that there were many additional briefs that went back and forth with the VCGCB's Staff Counsel in an attempt for Mr. Bright to prove, again, that his product met the specifications. VCGCB Staff Counsel determined that the Bright Group bid did not meet CDCR's specifications. She further stated that CDCR is not required to accept material deviations to its specifications.

Chairperson Caballero asked Ms. Talamantes if it was CDCR's position that the bid that was accepted met the specifications. Ms. Talamantes stated that Sika Sarnafil was the only company that submitted a bid that was determined to be complaint with the IFB.

The Board voted to adopt the hearing officer's decision to dismiss the protest by Bright Group on the grounds that the protest failed to state a basis upon which it may be upheld.

**Item 19. Bid Protest of SimplexGrinnell**  
**Invitation for Bid No. CCWF1000563001-RB**

Tracey Talamantes appeared on behalf of the California Department of Corrections and Rehabilitation.

Wayne Strumpfer, Chief Counsel, explained that the bid protest by SimplexGrinnell (Simplex) of the notice of intent to award the contract for California Department of Corrections and Rehabilitation (CDCR) Invitation for Bid Number CCWF1000563001-RB, was to procure a Nurse Call System for the Central California Women's Facility located in Chowchilla, California.

The IFB was issued by CDCR on March 15, 2011. CDCR received two bids: one from SimplexGrinnell at a cost of \$92,340.00, and another from Serban Sound Systems at a cost of \$156,280.47. CDCR rejected the SimplexGrinnell bid for failing to comply with the IFB because the Ramex Visistat did not have the capability to communicate between the patient and master station. The system was strictly a visual system with no audio-path and did not meet the Section 17750, paragraph 1,4A requirement. CDCR issued a notice of intent to award the bid to Serban Sound Systems, whose bid was found to be compliant with the IFB.

On May 25, 2011, SimplexGrinnell sent CDCR an email protesting the rejection of its bid. According to statute, the protestant's Detailed Statement of Protest was due on June 6, 2011. On that date, SimplexGrinnell sent the Board a fax attaching a copy of a letter sent by them to CDCR dated June 1, 2011. The fax stated, in part, that SimplexGrinnell enclosed data sheets for their system to show that the master station will talk between the patient station and the master Station. SimplexGrinnell requested that CDCR review the data sheets for the RamexVisistat/Nurse call to see if it met the specifications for the Chowchilla Women's Center Nurse Call. The 15 pages of specification did not indicate where the relevant information could be found.

In the bid protest process, the procuring agency normally provides a response to the Detailed Statement of Protest and the protestant provides a reply to that response; however, CDCR failed to submit its response brief within the time permitted and did not seek agreement from the other interested parties to submit a late brief. Under the regulations governing the bid protest process, such agreement is the only basis for allowing late submission of a brief. Thus, the protest was decided based solely upon evaluation of the procurement file and the protestant's Detailed Statement of Protest.

To successfully protest the proposed award of the IFB, SimplexGrinnell had to show in its Detailed Statement of Protest, by a preponderance of the evidence, that it is the lowest responsible bidder meeting specifications. SimplexGrinnell chose to send the Board its letter to CDCR dated June 1, 2011, as its Detailed Statement of Protest. The information and evidence provided in the Detailed Statement of Protest and procurement failed fail to show, by a preponderance of the evidence, that SimplexGrinnell was the lowest bidder meeting the IFB specifications.

The Board voted to adopt the hearing officer's decision to dismiss the protest by SimplexGrinnell on the grounds that the letter relied upon by SimplexGrinnell as its Detailed Statement of Protest failed to state a basis upon which the protest may be upheld.

**Item 20. Bid Protest of MetaVista Consulting Group**  
**Invitation for Bid No. FTB 1001-C001**

Tom Woods and Jay Jackson appeared on behalf of MetaVista Consulting Group. Kathleen Yates and Brian Kimura appeared on behalf of the Department of General Services. David Arden, Chief

Engineer, Science Applications International Corporation (SAIC), appeared to answer questions of the Board, if requested.

Wayne Strumpfer, Chief Counsel, explained that the bid protest by MetaVista Consulting Group (MetaVista) of the notice to intent to award the contract was to obtain the services of one company with five qualified Independent Verification and Validation Consultants to provide services for FTB's Enterprise Data to Revenue Project. Six bids were timely submitted and were scored according to the criteria set forth in the IFB. The highest score was received by SAIC; the second highest score was received by MetaVista.

Mr. Woods stated that he was appearing on behalf of Charles Ritchie, Vice President of MetaVista, who was out of the country. Mr. Woods stated that Mr. Ritchie did not want to postpone the matter for another month due to his inability to attend the meeting; however, there were matters that Mr. Ritchie submitted to the Board earlier in the week. He stated that Mr. Ritchie did not want there to be a presumption that arguments or materials submitted by him would be waived; conversely, he wanted the Board to consider those arguments. Mr. Woods further stated that he would have liked to respond to SAIC's recent submission to the hearing officer; however, he would defer to Mr. Jackson.

Jay Jackson stated that he disagreed with the hearing officer's recommendation to dismiss the protest because SAIC lacked the proper experience and qualifications required in the IFB.

Kathleen Yates stated that DGS supported the hearing officer's determination. She stated that DGS believed that despite the claim by the protestant that there was no oral hearing, MetaVista was allowed to submit written arguments to support their position. She further stated that the hearing officer made the right decision based on the documentation before him.

Chairperson Caballero asked Ms. Yates if she agreed with Mr. Jackson's comments. Ms. Yates stated that she did not agree.

Board voted to adopt the hearing officer's decision to deny the protest because MetaVista did not prove by a preponderance of the evidence that SAIC failed to comply with the IFB.

### **Victim Compensation Program**

The Board commenced the Victim Compensation Program portion of the meeting at 11:23 a.m.

#### **Request for Approval to Submit the CalVCP Rulemaking Record to the Office of Administrative Law (Title 2, § 649.21)**

Wayne Strumpfer, Chief Counsel, reported that at the March 2011 meeting the Board authorized the CalVCP to proceed with regulatory action to implement program changes adopted by the Board in February 2011. At its May 2011 meeting, the Board authorized CalVCP to file the following regulatory actions with the Office of Administrative Law (OAL):

- Lower the maximum total CalVCP benefit from \$70,000 to \$63,000.
- Set \$30,000 maximum benefit for the purchase, renovating, and retrofitting of vehicles, and add a requirement that the applicant submit documentation from a mobility or rehabilitation specialist stating that the victim is mentally and physically capable of operating the vehicle.
- Define the documentation that can be used to evidence income loss or support loss, and eliminate the payment of income and support loss when the victim only had a job offer, but was not yet working, at the time of the crime.

- Lower the maximum funeral/burial benefit from \$7,500 to \$5,000, and eliminate from the covered funeral/burial expenses the cost for food, beverages, and renting equipment and supplies such as tables and chairs.

Mr. Strumpf reported that CalVCP filed the rulemaking record for the above-described regulations with OAL on May 20, 2011. The Board continued consideration of the proposed attorney fee regulation until the August 2011 meeting. An optional form for attorneys to document services rendered is now referenced in the proposed regulation and included as a supplemental document.

He stated that CalVCP requested authorization to file the rulemaking record with OAL for the proposed attorney fee regulation. The proposed new regulation would implement the attorney fee statute by providing for verification of attorney's fees through fee statements documenting that attorney services were actually rendered to the applicant prior to receiving payment from the Board for those services. The proposed regulation would also ensure that the applicant is aware of the attorney's representation and consent to that representation.

Mr. Strumpf reported that last fiscal year, 67 attorneys were paid \$419,000.00 from the Restitution Fund without any verification that victims were served in any way. He stated that attorney's fees are the only payout by the Board from the Restitution Fund without any verification.

Linda Siegel, founder of the Law Offices of Michael Siegel, stated that with regard to subdivision (d) "legal services rendered" representation of CalVCP claimants is similar to contingency fee work. Attorneys are paid only if the application is approved. She stated that she had concerns with subdivisions (e) – (h). She stated that if those subdivisions were included and implemented, it would effectively close their practice due to ethical or financial considerations. She stated that it would also place a burden on the Board in terms of administration. Ms. Siegel further stated that with regard to subdivision (h), the Law Offices of Michael Siegel currently uses a form that clients sign which are not submitted to the Board because they are not required. The form authorizes the attorney to review the records to seek evidence of the crime, similar to a limited power of attorney form and authorization. She stated that their form addresses many of the concerns that the Board has and she would like CalVCP to consider implementing a similar form for an applicant's signature.

Tim Ragan, attorney, stated that he represented crime victims, and made the following comments:

- Subdivision (e) regarding detailing the date the legal services are rendered, would cause him to discontinue assisting CalVCP clients. He stated that CalVCP claims are small cases and even though attorney's fees are capped at \$500.00, he occasionally receives checks in the amounts of \$7 or \$14. Any additional time spent on recordkeeping would make it less likely that he would be available to represent claimants.
- Subdivision (g) regarding the applicant being able to appeal the payment or non-payment of attorney's fees was disturbing. He stated that the applicants are receiving free legal counsel. If the subdivision remained, then the attorney should have the opportunity to appeal the attorney's fees not being paid by the Board and leave the applicant out of the process.

Jennifer Capitolo, Senior Policy Advisor, Nossaman Public Policy Practice Group, retained by the Law Offices of Michael Siegel, stated that she spent several weeks speaking with organizations across the state regarding subdivision (h), which states that attorneys must sign an application prior to the applicant signing. She stated that individuals from the bar association and multiple legal organizations, including district attorneys, have all said that the subdivision is questionable. Ms. Capitolo requested that the Board review the subdivision again or go back out for public comment a second time.

Chairperson Caballero asked Mr. Strumpfer if adopting the staff recommendation today would begin the public hearing process. Mr. Strumpfer stated that the public hearing process was completed. He further stated that upon Board approval, OAL would review the regulation and, if approved, the regulation would be implemented.

Ms. Caballero stated that she struggled with the best way to handle this very important issue, given the way that it is structured. She stated that she felt strongly about documentation of attorney's fees. She stated that having practiced law herself, it is essential that attorneys provide documentation. She added that with limited CalVCP funds, the Board has to be wise with how the money is spent. She commented that the process is not unduly burdensome and that billing in half-hour increments is generous given that most of the industry bills in much shorter increments.

Ms. Caballero stated that having the applicants understand that they are represented by an attorney is equally important. If there are ways to comply with this requirement and meet the parameters, she would be satisfied that it would be acceptable. She further stated that there may have been individuals who were not aware that they were represented which raises concerns for her.

Chairperson Caballero and Board member Ramos voted to adopt the staff recommendation to adopt regulation section 649.21 and to authorize the Executive Officer to file the rulemaking record with the Office of Administrative for its review and approval. Board member Chivaro opposed.

### **Disqualification of a Provider of Medical and Mental Health Services**

The California Victim Compensation and Government Claims Board (Board) may provide mental health services to victims of qualifying crimes. The Board works closely with mental health therapists who then submit billing statements to the Board to receive reimbursement for the treatment provided to the victim. On September 24, 2010, mental health provider Dr. Barton Harris Rubin (Dr. Rubin) was placed on five years' probation by the California Board of Psychology after he submitted false billing statements to the Board with the purpose of receiving payment for treating a victim on dates where no treatment was provided. Dr. Rubin also created false medical records and notes on the dates in question in an attempt to further deceive the Board.

Kevin Kwong, VCGCB Staff Counsel, reported that at its December 16, 2010, meeting, the Board disqualified Dr. Rubin as being eligible to receive Board compensation for providing medical and mental health services to victims until September 24, 2015, the same length of time imposed by the California Board of Psychology. The Board also directed the staff to conduct an audit on any current outstanding bills pending from Dr. Rubin to ensure compliance with Board rules and requirements.

Mr. Kwong reported that an audit of current outstanding bills has revealed that Dr. Rubin has recently submitted billing statements to the Board for treatment with a victim that never occurred. Thus, the staff recommends that Dr. Rubin's disqualification from being eligible to receive Board compensation be changed to a permanent disqualification.

The Board voted to amend its December 16, 2010, order as follows: (1) change the length of Dr. Rubin's disqualification from September 24, 2015, to a permanent disqualification; and (2) change the length of disqualification of any provider that works in a treatment center that is owned or administered by Dr. Rubin, including the centers located in Pinole and Richmond, to a permanent disqualification.

Chairperson Caballero asked Mr. Kwong if the Board contacted the Board of Psychology relative to Mr. Rubin's probation and the new information discovered by the CalVCP. Mr. Kwong stated that the CalVCP had not but staff would contact the Board of Psychology and notify them of its findings.

## **Closed Session**

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 11:38 a.m. to deliberate on the proposed decisions, numbers 1 through 169F.

## **Open Session**

The Board reconvened into open session at 11:53 a.m. The Board voted to adopt the proposed decisions for numbers 1-169F, with the exception of number 9, A08-1358225, which was returned to the hearing officer. The Board directed staff to consider the evidence that was presented at the reconsideration to make a determination as to the decision on the hearing.

## **Adjournment**

The Board meeting adjourned at 11:54 a.m.